

In the United States Court of Federal Claims

No. 23-30

(Filed: 8 May 2023)

NOT FOR PUBLICATION

JOHN GAILEY, JR. *
*
Plaintiff, *
*
v. *
*
THE UNITED STATES, *
*
Defendant. *

ORDER

HOLTE, Judge.

On 5 May 2023, pursuant to Rule 52.2 of the Rules of the Court of Federal Claims (“RCFC”), the parties filed a joint motion for voluntary remand and stay of proceedings. *See* J. Mot. for Vol. Remand and Stay of Proceedings, ECF No. 6. In their Motion, the parties state: “Without concession of error by the United States and without the United State’s [sic] waiver of any defenses or objections to Plaintiff’s claims, the parties have agreed to request that the Court remand this case to the [Army Board of Correction of Military Records (‘ABCMR’)] pursuant to . . . RCFC 52.2 and stay proceedings before this Court to allow the [ABCMR] to reevaluate Plaintiff’s request for a permanent medical retirement.” *Id.* at 1–2. The parties assert “[a r]emand serves the Court’s and the parties’ interest in resolving this matter in a just, speedy, and inexpensive manner.” *Id.* at 2 (citing RCFC 1). According to the parties, plaintiff “may receive the relief he seeks during the remand with no need for further judicial proceedings.” *Id.* The Court accordingly adopts the parties’ proposed procedure for remand and orders the following:

- (1) The Court **GRANTS** the parties’ Joint Motion to Remand, ECF No. 6, and **REMANDS** the case to the ABCMR.
- (2) The remand period **SHALL TERMINATE** on **6 November 2023**, and the Court **STAYS** all proceedings in this case until that date. *See* RCFC 52.2(b)(1)(C). If the ABCMR has not acted on the remand on or before **6 November 2023**, the parties shall follow the procedures provided in RCFC 52.2(c).
- (3) The ABCMR **SHALL RECONSIDER** fully all claims asserted by plaintiff, including any claims for permanent disability retired pay pursuant to 10 U.S.C. § 1201, and any new arguments or evidence he presents regarding his existing claims, in

accordance with the ABCMR's applicable procedures and powers, including the ABCMR's power to seek additional advisory opinions.

(4) The government **SHALL FILE** a joint status report every 90 days, with the first due on **7 August 2023**, apprising the Court of the status of the remand proceedings.

(5) Within 30 days of the ABCMR's decision, the parties **SHALL FILE** a joint status report advising the Court whether: (1) the remand affords a satisfactory basis for disposition of the case; or (2) further proceedings are required and, if so, the nature of such proceedings. *See* RCFC 52.2(e)(1).

The Court **DIRECTS** the Clerk to serve a certified copy of this Order and the complaint, along with a copy of the Court's docket sheet in this case, to the ABCMR at:

Army Review Boards Agency (ARBA)
251 18th Street South
Suite 385
Arlington, VA 22202-3531
army.arbainquiry@mail.mil

IT IS SO ORDERED.

s/ Ryan T. Holte
RYAN T. HOLTE
Judge